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*Kevin L. Smith*

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of the supreme court,  
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tax court

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**IN THE  
COURT OF APPEALS OF INDIANA**

[illegible]

No. 71A04-0710-CR-583

STATE OF INDIANA,  
Appellee-Plaintiff.

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No. 71D02-0607-FD-769

**MARCH 11, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

Johnnie Williams appeals his conviction by jury of possession of cocaine as a Class D felony and resisting law enforcement as a Class A misdemeanor. We affirm.

The sole issue for our review is whether the trial court erred in admitting evidence.

On July 25, 2006, South Bend Police Department Officer Jason King was dispatched to Fellows and South Street after someone reported that a woman with a tan shirt was committing prostitution. When he arrived at the scene, Officer King saw a man and a woman walking down the street. Officer King drove his car up to within five feet of the couple. As the officer opened his car door, Williams took off running. When Williams failed to obey the officer's command to stop, Officer King pursued him. During the pursuit, Williams dropped a baggie with cocaine in it on the ground. Officer King eventually tackled and handcuffed Williams, who was charged with possession of cocaine and resisting law enforcement. Williams filed a motion to suppress the cocaine, which the trial court denied. Williams was subsequently convicted of both charges in a jury trial. He appeals the convictions.

At the outset we note that although Williams originally challenged the admissibility of the evidence through a motion to suppress, he appeals following a completed trial. The issue is, therefore, whether the trial court abused its discretion in admitting the evidence at trial. *See Widduck v. State*, 861 N.E.2d 1267, 1269 (Ind. Ct. App. 2007).

Our standard of review for rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pretrial motion to suppress or by trial objection. *Id.* We do not reweigh the evidence, and we consider the conflicting evidence

most favorable to the trial court's ruling. *Id.* Unlike an ordinary sufficiency of the evidence case, however, we must also consider any uncontested evidence favorable to the defendant. *Id.*

Williams argues the trial court erred because the cocaine in this case was seized without a warrant or reasonable suspicion. We addressed this same issue in *Gooch v. State*, 834 N.E.2d 1052 (Ind. Ct. App. 2005). Therein, Indianapolis Police Officer Tracy Lomax observed Gooch and a woman walking away from an abandoned house. The officer ordered the couple to stop so he could investigate their connection to the abandoned house. Gooch ignored the officer's command and continued walking until he crouched behind a parked vehicle. Concerned for his safety, Officer Lomax ordered Gooch to stand and raise his hands. Immediately thereafter, Gooch threw something. Officer Lomax apprehended and handcuffed Lomax and then noticed two bags of marijuana and cocaine on the ground near the vehicle. Gooch was charged with one count of cocaine possession. He filed a motion to suppress the cocaine, which the trial court denied.

In an interlocutory appeal, this court determined that we did not have to address Gooch's Fourth Amendment issue because he had abandoned the cocaine that he sought to suppress. *Id.* at 1053. Specifically, we noted that even though Officer Lomax was attempting to restrain Gooch's activities, Gooch's freedom was not interrupted, inasmuch as he failed to initially obey Officer Lomax's instructions. *Id.* at 1054. Only after Gooch tossed the bag did Officer Lomax use force to restrain and handcuff Gooch. *Id.* As a result, the bag was subject to a lawful seizure by the police when Gooch tossed it to the

ground. *Id.* Moreover, Gooch had not been seized at the time he tossed the bag of cocaine, so the drugs were not the product of an illegal seizure. *Id.* at 1054-55. We therefore affirmed the trial court's denial of Gooch's motion to suppress. *Id.* at 1055.

Here, as in *Gooch*, although Officer King was attempting to restrain Williams' activities, Williams' freedom was not interrupted, inasmuch as he failed to initially obey Officer King's instructions. Only after Williams tossed the bag did Officer King use force to tackle and handcuff Williams. As a result the bag was subject to a lawful seizure by the police when Williams tossed it to the ground. Moreover, Williams had not been seized at the time he tossed the bag, so the drugs were not the product of an illegal seizure. We therefore find that the trial court did not abuse its discretion when it admitted the cocaine into evidence.<sup>1</sup>

Affirmed.

ROBB, J., and BARNES, J., concur.

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<sup>1</sup> We reach the same result under the Indiana Constitution. See *Campbell v. State*, 841 N.E.2d 624, 630 (Ind. Ct. App. 2006) (explaining that abandoned property is not subject to the protections of Article I, Section 11 of the Indiana Constitution).